

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JAMES V. WILLIAMS,

Petitioner,

vs.

BRIAN WILLIAMS, et al.,

Respondents.

2: 10-CV-00658 -PMP-LRL

ORDER

Petitioner has filed a motion to proceed *in forma pauperis*. (Docket #1.) Based on the information about petitioner's financial status, including any additional information that may have provided, the court finds that the motion to proceed *in forma pauperis* should be granted.

The petition shall now be filed and served on respondents. A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. *See* 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

1 Petitioner has filed a motion for appointment of counsel asserting that the issues in
2 his case are complex and that he is unable to adequately represent himself. (Docket #2.) There is
3 no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v.*
4 *Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The
5 decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th
6 Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.),
7 *cert. denied*, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the
8 case are such that denial of counsel would amount to a denial of due process, and where the
9 petitioner is a person of such limited education as to be incapable of fairly presenting his claims.
10 *See Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970).

11 The petition on file in this action is sufficiently clear in presenting the issues that
12 petitioner wishes to bring. The issues in this case are not complex. It does not appear that counsel is
13 justified in this instance. The motion shall be denied.

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16 **IT IS THEREFORE ORDERED** that the application to proceed *in forma pauperis*
17 (Docket #1) is **GRANTED**.

18 **IT IS FURTHER ORDERED** that the motion for appointment of counsel (Docket
19 #2) is **DENIED**.

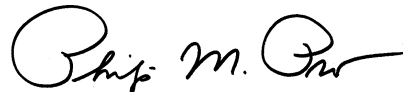
20 **IT IS FURTHER ORDERED** that the Clerk shall **FILE the petition and**
21 **ELECTRONICALLY SERVE** the petition (Docket #1) upon respondents.

22 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from
23 entry of this order within which to answer, or otherwise respond to, the petition. In their answer or
24 other response, respondents shall address any claims presented by petitioner in his petition as well as
25 any claims presented by petitioner in any Statement of Additional Claims. Respondents shall raise
26 all potential affirmative defenses in the initial responsive pleading, including lack of exhaustion and

1 procedural default. **Successive motions to dismiss will not be entertained.** Petitioner states in his
2 petition that the state prison has lost all of his copies of state court decisions in his case except for
3 the latest decision by the Nevada Supreme Court. Accordingly, respondents shall file and serve
4 copies of the relevant state court decisions at the same time they file their response to the petition.
5 If an answer is filed, respondents shall comply with the requirements of Rule 5 of the Rules
6 Governing Proceedings in the United States District Courts under 28 U.S.C. §2254. If an answer is
7 filed, petitioner shall have **forty-five (45) days** from the date of service of the answer to file a reply.

8 **IT IS FURTHER ORDERED** that, henceforth, petitioner shall serve upon the
9 Attorney General of the State of Nevada a copy of every pleading, motion, or other document he
10 submits for consideration by the court. Petitioner shall include with the original paper submitted for
11 filing a certificate stating the date that a true and correct copy of the document was mailed to the
12 Attorney General. The court may disregard any paper that does not include a certificate of service.
13 After respondents appear in this action, petitioner shall make such service upon the particular
14 Deputy Attorney General assigned to the case.

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16 DATED: May 28, 2010.

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18 PHILIP M. PRO
19 United States District Judge
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